

APPEAL NO. 040867
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appealed, contending that he has no ability to work due to his compensable injury. The respondent (carrier) asserts that the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the evidence supports the hearing officer's decision.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant at his correct address on March 19, 2004. The claimant indicates in his appeal that he received the hearing officer's decision on March 15, 2004, which is not possible because it was not mailed to him until March 19, 2004. The deemed date of receipt under Rule 102.5(d) was March 24, 2004. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was April 15, 2004. The envelope in which the claimant mailed his appeal to the Commission is postmarked April 16, 2004. The claimant's appeal was not timely filed with the Commission because it was mailed to the Commission after April 15, 2004.

Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party. Because the claimant did not timely file an appeal with the Commission, the hearing officer's decision has become final under Section 410.169.

The true corporate name of the insurance carrier is **PROTECTIVE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**VAN WAGNER COMPANY
1100 JUPITER ROAD, SUITE 121
PLANO, TEXAS 75074.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge